

March 2, 2000

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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ORDER GRANTING PETITION TO INTERVENE, SUBJECT TO CONDITIONS.

SUBJECT: Department of Development and Environmental Services File No. **E9901410**

SCHNEIDER HOMES, INC.
Code Enforcement Appeal

Location: 3260 South 288th Street

Appellant: Schneider Homes, *represented by*
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Department: King County Department of Development and Environmental Services,
Code Enforcement Section, *represented by*
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Intervenor: **Lyle Lindblad**
4209 South 280th
Auburn, WA 98001

This proceeding is an appeal by Schneider Homes, Inc. of a Notice of King County Code Violation and Civil Penalty Order issued by the Department of Development and Environmental Services on October 29, 1999 (“Notice and Order”). The Notice and Order alleges:

Clearing and grading within a sensitive area without required permits; and

Violation of certain permit conditions:

- Failure to call for a pre-construction meeting;
- Failure to conform to requirements relating to construction of a temporary erosion and sediment control pond; and
- Failure to disclose a change of circumstances on the site which materially affects the ability to meet the permit conditions; or
- Which makes inaccurate the basis for establishing those conditions.

The pleadings and the discussion at the pre-hearing conference indicate that the primary matters in dispute between DDES and Schneider are whether the Class 2 stream which crosses the property has potential salmonid habitat (which would require a 100-foot buffer), and whether DDES had the authority in October, 1999, after work had commenced, to issue a Stop Work Order and the Notice and Order based upon newly-discovered wetlands and the potential salmonid habitat.

If it is determined that Schneider Homes, Inc. was clearing and grading upon the subject property without required permits or violated the grading permit under which it was operating, a variety of penalties, as well as restoration and rehabilitation requirements, may be imposed. Site restoration and rehabilitation of the sensitive areas on the site could have significant downstream effect, including impacts upon Bingaman Pond, in which there is a high degree of public interest. On the other hand, if Schneider Homes' activities on the site are determined to be consistent with a valid grading permit, and that the Stop Work Order and Notice and Order were issued in error, no penalties can be imposed, nor can site restoration or sensitive area rehabilitation be required in this proceeding.

The petition to intervene seeks establishment of a larger sensitive area buffer, more effective runoff controls, and implementation of other measures to prevent future water quality impacts to Bingaman Creek and Bingaman Pond. The Appellant objects to the petition as an artifice to re-open the environmental review and approval process for the previously issued permit(s). The Appellant also claims to have been prejudiced by the late service of the petition for intervention (see Examiner's "Order on Petition to Intervene" issued February 11, 2000). Finally, the Appellant contends that Lyle Lindblad and Friends of Bingaman Pond are not eligible parties to this proceeding under provisions of the King County Code.

Having considered the pleadings, the assertions and arguments of the briefs and statements requesting and opposing the petition to intervene, and applicable provisions of the King County Code and the Rules of Procedure of the King County Hearing Examiner, I conclude:

1. The February 11, 2000, Order should be re-affirmed. The Appellant Schneider Homes has not demonstrated prejudice from the late service of the Petition to Intervene which outweighs the public interest which is served by giving full and fair consideration to the substance of Mr. Lindblad's petition.
2. The Rules of Procedure establish two classes of intervention; one as a matter of right; the second "...in the discretion of the examiner when participation of the intervenor as a party would be in the public interest." Rule X.A.1.b. Although the Appellant is correct that the petitioner does not have

the status of a party to this proceeding, Mr. Lindblad is not thereby precluded from a discretionary

review of his petition, to be decided based upon the Examiner's determination as to whether his participation as an intervenor would be in the public interest.

3. Approval of a petition to intervene may be conditional or limited, and made subject to such terms as will further the purposes of the proceedings. Rule X.A.2.c.(2).

Now, therefore, it is hereby ordered:

1. The issues of whether Schneider Homes did or did not violate the King County Code or conditions of its grading permit, as alleged by DDES, will be decided based upon actions taken or not taken by Schneider Homes on its property. These matters have been investigated by DDES. The dispute concerns the legal rights and authority of the Appellant and DDES. There is no public interest which would be served by authorizing participation by Lyle Lindblad and Friends of Bingaman Pond in adjudicating those issues. The petition by Lyle Lindblad and Friends of Bingaman Pond to participate in the determination of whether or not code or permit violations occurred is denied.
2. In the event it is determined in this proceeding that a code violation occurred, or a permit condition was not complied with by the Appellant, the scope of authorized remedial actions is likely to include site restoration or sensitive area rehabilitation. Site restoration and sensitive area rehabilitation may have off-site impacts on Bingaman Creek or Bingaman Pond. The public interest would be served by permitting participation by Lyle Lindblad and Friends of Bingaman Pond in the consideration of the likely effects of site restoration and rehabilitation on these valuable public resources. The petition is granted to permit intervention in the consideration of remedial action to be ordered, if any, should it be adjudicated that a violation has occurred.
3. In order to accommodate the parties and minimize the costs of these proceedings, they will be bifurcated. The hearing presently scheduled for March 20, 2000, will be limited to the issues of whether the Appellant violated the King County Code or failed to meet or perform conditions of its permit(s), as alleged in the Notice and Order, and whether the Department of Development and Environmental Services had the authority and sufficient grounds to issue the subject Stop Work Order and Notice and Order in October, 1999.
4. Subsequent hearings, if appropriate, will be scheduled for consideration of penalties, site restoration and rehabilitation of sensitive areas.

ORDERED this 2nd day of March, 2000.

James N. O'Connor
King County Hearing Examiner

TRANSMITTED this 2nd day of March, 2000, to the following parties and interested persons:

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